

BOISE, FRIDAY, JANUARY 20, 2012 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent.

V.

ABELARDO DOMINGUEZ GOMEZ.

Defendant-Appellant.

Docket No. 38889

Appeal from the District Court of the Third Judicial District, State of Idaho,
Canyon County. Hon. Thomas J. Ryan, District Judge.

Nevin, Benjamin, McKay & Bartlett, LLP, Boise, for appellant.

Hon. Lawrence G. Wasden, Idaho Attorney General, Boise, for respondent.

This case arises out of a petition of review from the Court of Appeals on an appeal of the sentence and restitution order imposed following a guilty plea. In 2008, Abelardo Gomez (Gomez) was arrested and charged with one count of conspiracy to traffic in cocaine and eleven counts of trafficking in cocaine. In a plea agreement reached with the State, Gomez agreed to plead guilty to three counts in exchange for an eight year fixed sentence. At sentencing, the district court also imposed a twenty-five year indeterminate sentence and a restitution order totaling \$129,534.97. Gomez argues that the indeterminate sentence is excessive, and that the restitution order is a violation of the plea agreement since it was not contemplated in the agreement.

After sentencing, Gomez timely filed a notice of appeal, which was heard by the Court of Appeals. The Court of Appeals vacated the restitution order, holding that the order breached the plea agreement, since the written agreement did not mention the issue of restitution. The State then timely filed a petition for review, which this Court accepted.

BOISE, FRIDAY, JANUARY 20, 2012 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

ALESHA KETTERLING,

Plaintiff-Appellant,

V.

**BURGER KING CORPORATION, dba
BURGER KING, HB BOYS, a Utah based
company,**

Defendants-Respondents.

Docket No. 38050

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Minidoka County. Hon. Jonathan P. Brody, District Judge.

Kent D. Jensen Law Office, P.C., Burley, for appellant.

Benoit, Alexander, Harwood & High, LLP, Twin Falls, for respondents.

This is an appeal from the district court's summary judgment grant for defendants Burger King, a Florida corporation, and HB Boys L.C., a Utah limited liability company, in Alesha Ketterling's negligence action. Ketterling alleged that she slipped on snow in the parking lot of the Burger King restaurant in Burley, Idaho on December 22, 2006. The district court granted summary judgment to HB Boys because the court concluded that Ketterling failed to timely join HB Boys as a defendant. The court subsequently granted summary judgment to Burger King, holding that, as franchisor, it did not control the premises where Ketterling fell and had no vicarious liability for Ketterling's injuries. Ketterling appealed.

BOISE, FRIDAY, JANUARY 20, 2012, AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

LINCOLN F. MC NULTY,)	
)	
Claimant-Appellant,)	
)	Docket No. 38331
v.)	
)	
SINCLAIR SERVICES CORPORATION,)	
dba SUN VALLEY CO.; THE)	
SAWTOOTH CLUB; Employers; and)	
FIRST LIGHT INDUSTRIES, INC., Major)	
Base Employer; and IDAHO)	
DEPARTMENT OF LABOR,)	
)	
Respondents-Respondents on Appeal.)	
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Appeal from the Industrial Commission of the State of Idaho.

Cynthia J. Woolley, Ketchum, for appellant.

Hon. Lawrence G. Wasden, Idaho Attorney General, for respondent.

Appellant, Lincoln F. McNulty, worked as a ski patroller for Sinclair Services Company as a member of the Sun Valley Resort from 2005 to 2010. Once the ski season ended in April of 2009, McNulty filed for unemployment benefits effective April 19, 2009 through November 28, 2009. During those off-season months, McNulty began working part-time at the Sawtooth Club for some extra income. However, McNulty failed to report any earnings from the Sawtooth Club to the Idaho Department of Labor when he filed for unemployment benefits each week. The Idaho Department of Labor discovered the discrepancy and a claims investigator spoke with McNulty and ultimately issued an Eligibility Determination that McNulty was ineligible for benefits because he willfully made false statements or failed to report material facts in order to obtain benefits.

On July 21, 2010, Appeals Examiner Shelton conducted a telephone hearing and affirmed the Eligibility Determination. McNulty appealed to the Idaho Industrial Commission. On October 21, 2010, the Commission issued its Decision and Order concluding that McNulty willfully failed to report material facts in order to obtain benefits. On December 2, 2010, McNulty appealed to this Court, arguing that McNulty's failure to report was not willful, the facts were not material, and that he should be eligible for a waiver of the requirement to repay the unemployment benefits.